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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,778	09/29/2003	Volkert A. Zeijlemaker	P-10498.00	2478

27581 7590 03/09/2007  
MEDTRONIC, INC.  
710 MEDTRONIC PARK  
MINNEAPOLIS, MN 55432-9924

EXAMINER
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JASANI, ASHISH S

ART UNIT	PAPER NUMBER
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3737

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/673,778	<b>Applicant(s)</b> ZEIJLEMAKER, VOLKERT A.	
	<b>Examiner</b> Ashish S. Jasani	<b>Art Unit</b> 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-38 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

2. Claim 25 is objected to because of the following informalities: the claim language refers to "the programmer" in lines 2 and 3, but no reference to "a programmer" has been made in independent claim 23 which the instant claim depends on. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(g)(1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

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4. Claims are rejected under 35 U.S.C. 102(e) as being anticipated by Foster et al. (USPN 6,925,328).

With regards to claims 1, 3-4, 11, 13, 19, 21-23, 31, and 34; Foster et al. teaches of an MRI compatible pacemaker (title) that switches from a first mode to a second mode upon the insult of EMI interference (column 3, lines 22-35). The first mode is synchronous pacing (column 3 & 4, lines 65-67 & 4-9 respectively) and the second mode is asynchronous firing (column 4, lines 10-29). Foster et al. teaches that the device is adapted for MRI usage (column 2, lines 14-16).

With regards to claims 2, 12, 14-15, 17, 24, 26, 27, 32, 35, and 37-38; Foster et al. teaches of using the gradient field as a trigger (column 9, lines 12-19; column 10, lines 15-25; and Figure 7).

With regards to claims 5-8, Foster et al. teaches of timing of the pacemaker device with the MRI device (Figures 6b-d; Column 11, lines 7-21).

With regards to claims 9-10, 20, and 29-30; Foster et al. teaches of disabling first module (first mode: synchronous pacing) and enabling the second module (asynchronous pacing). Foster et al. also teaches of re-enabling the first module (column 7, lines 49-67).

With regards to claims 16 & 25, the operator of the MRI device reads upon the programmer which sets the MRI pulse sequence timing.

With regards to claims 18, 28, 33, and 36; Foster et al. teaches that the signal provides an indication of the duration of the radiation such that Foster et al. teaches that the secondary module consists of a counter to reset and switch to the primary module

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for synchronous pacing. If the primary module detects EM interference the device will revert to asynchronous pacing (columns 7 & 8, lines 49-67 & 1-11 respectively).

With regards to claim 34, Foster et al. teaches of an MRI compatible pacemaker (title) that switches from a first mode to a second mode upon the insult of EMI interference (column 3, lines 22-35). The first mode is synchronous pacing (column 3 & 4, lines 65-67 & 4-9 respectively) and the second mode is asynchronous firing (column 4, lines 10-29). Foster et al. teaches that the device is adapted for MRI usage (column 2, lines 14-16). Foster et al. teaches that the signal provides an indication of the duration of the radiation such that Foster et al. teaches that the secondary module consists of a counter to reset and switch to the primary module for synchronous pacing. If the primary module detects EM interference the device will revert to asynchronous pacing (columns 7 & 8, lines 49-67 & 1-11 respectively).

### ***Conclusion***

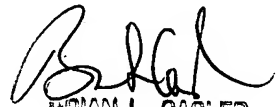
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ashish S. Jasani whose telephone number is 571-272-8025. The examiner can normally be reached on Mon. - Fri. 9:30 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (571) 272 - 4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ASJ

  
BRIAN L. CASLER  
SUPERVISORY PATENT EXAMINER  
TECHNICAL CENTER